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BEFORE THE

Supreme Court of the United States

October Term 1946

No. 1091

C. W. FALWELL, JR., ET AL,
Appellants,

v.

UNITED STATES OF AMERICA, ET AL,
Appellees.

BRIEF OF
REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.,
Amicus Curiae

and

BROOKS TRANSPORTATION COMPANY, INC.,
Intervenor

IN SUPPORT OF THE MOTION OF THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION TO AFFIRM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT OF VIRGINIA

CONSENT AND PETITION FOR LEAVE TO FILE BRIEF

It is hereby represented to the Court that all parties to the proceedings below have consented to the filing of this brief by intervenor Regular Common Carrier Conference.[1]

Intervenor shows that it is an autonomous conference of the American Trucking Association and has heretofore represented the common carrier industry, in national issues, before this Court.[2]

The Regular Route Conference (intervenor here) represents carriers engaged in service via fixed or regular routes and is thereby distinguished from carriers engaged in irregular route operations which latter group are separately represented by the Irregular Route Common Carrier Conference of the American Trucking Associations.

The Irregular Route Conference has made known its intention to file a brief herein as *amicus curiae* and therefore the Regular Common Carrier Conference deems it advisable to present to the Court its concept of the issues raised by appellants.[3]

Brooks Transportation Company was allowed to intervene below as a party in interest. Brooks Transportation Co. supports the motion of the United States and the Interstate Commerce Commission because it was a party to the proceedings below and has an economic interest in the matter.

STATEMENT OF THE CASE

Insofar as the issues before the Interstate Commerce Commission and the court below were involved, appellant

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[1] Filed with the Clerk.

[2] *Interstate Commerce Commission v. Parker, et al*, 326 U. S. 60, 89 L. ed. 2051; *Nobel v. U. S.*, 319 U. S. 88, 87 L. ed. 1277.

[3] Consent given by appellees.

is a regular route interstate carrier handling commodities generally. Its operations extend from Lynchburg, Virginia to points in the east as far as New York.[4] Appellant sought to extend its operations westwardly into southwestern Virginia and on into West Virginia. In order to accomplish this appellant took two steps. It purchased a regular route interstate common carrier of general commodities, which carrier (Evans Line) operated from Roanoke, Virginia, westwardly through southwestern Virginia on into West Virginia.[5] This left the original Falwell Lines and the acquired Evans Lines separated by a distance of about forty miles between Lynchburg, Virginia and Roanoke, Virginia. To close this gap, Falwell undertook to acquire a portion of the interstate operating authority held by one Draper.

To bring into focus the issues raised by this latter maneuver on the part of Falwell it is necessary to clearly understand the nature of the rights which were held by Draper.

Draper held a certificate as an interstate common carrier of commodities generally, so, to that extent, the Draper rights were of the kind held by Falwell and Evans. But Draper is an *irregular* route carrier and in addition thereto Draper is a very limited or special type of irregular route carrier.[6]

The nature of the special or limited type of certificate held by Draper is made clear by pointing out that Draper is a *radial* irregular route carrier having authority to operate radially to and from a single base point, i. e., Roanoke, Virginia. Operating radially from Roanoke, Draper is authorized to serve numerous named points

[4] Falwell's rights were described by the Commission in its report and order.

[5] Evans' rights were described by the Commission in its report and order.

[6] Draper's rights were described by the Commission in its report and order.

such as Lynchburg, Virginia and Richmond, Virginia. In that setting Falwell undertook to acquire only that part of Draper's rights between Roanoke and Lynchburg but including Roanoke, the single and exclusive radial base. Nevertheless, Draper seeks to retain the right to operate from the single radial base of Roanoke and also to serve points beyond (east of) Lynchburg, such as Richmond, Virginia.

The sole interest and purpose of Falwell in securing a segment of the Draper rights is to bridge the gap (forty miles) in the Falwell-Evans regular route rights between Roanoke and Lynchburg. These interests and objectives being present Falwell applied to the Interstate Commerce Commission for authority to split off and acquire the segment of the Draper rights between Roanoke and Lynchburg.[7] Normally, action by the Commission on such applications require some time as other parties have a right to be heard in opposition and to avail themselves of such procedure as is provided by the Commission's Rules of Practice.[8] To facilitate immediate operations, Falwell availed itself of temporary authority procedure, which is ex parte in nature, and secured temporary authority to lease the segment of the Draper rights pending hearing and determination of an application for permanent authority to purchase the segment of the Draper rights.

Temporary authority was granted Falwell to lease the segment of the Draper rights (for 180 days) and Falwell also filed an application for permanent authority. At the hearing on the application for permanent authority, protestants appeared and resisted the application.[9] By the time the hearing was held on the application for permanent authority, Falwell had been operating the segment of the Draper rights for some months, therefore

[7] Stated by the Commission in its report and order.
[8] Application filed July 31, 1944, decided January 14, 1946.
[9] Stated by the Commission in its report and order.

the type of operation conducted and to be conducted by Falwell was fully established and shown of record and nothing was left for speculation.[10]

In determining whether Falwell should be authorized to acquire a segment of the Draper rights, the Commission had to resolve four primary issues:

1. Are the Draper radial irregular route rights of the kind that can be split or divided between two or more carriers? Would the division create two operating authorities where only one has been authorized?

2. If the Draper rights can be split and divided should Falwell be permitted to conduct a regular route operation (as a bridge) between Lynchburg and Roanoke, using an irregular route certificate as the operating authority?

3. Should Draper be permitted to disintegrate the certificate of public convenience and necessity held by him and thereby deprive the public of the radial service to which the public was entitled under the certificate?

4. Is the transaction consistent with the public interest under the National Transportation Policy, having in mind the competitive conditions which would be disturbed and affected by the extension of operations by Falwell into territory already served by numerous carriers.

The Commission denied Falwell's application to acquire the Draper rights [11] and Falwell appealed to the District Court which upheld the Commission [12] and now Falwell appeals to this Court.

The United States and the Interstate Commerce Commission having filed a motion to affirm the decision of the court below, these intervenors file this brief in support of said motion to affirm.

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[10] Stated by the Commission in its report and order.
[11] *Falwell—Purchase—Draper, Docket* MC-F-2600
[12] *U. S. D. C. of Virginia,* Decided Dec. 21, 1946.

ISSUES INVOLVED

The issues in this case which are before this Court, are necessarily limited to issues of law because appellant has not brought up the record before the Commission and therefore the findings of the Commission cannot be challenged by appellant. Appellant seeks to raise issues of law and the case, in substance, comes down to the jurisdiction of the Commission to dispose of the application administratively as distinguished from statutory limitations which, as construed by appellant, would deprive the Commission of administrative discretion.

APPELLANT'S POINT (a)

"That the Report and Order of the Commission, Acting Through Division 4, of February 22, 1945, were, in Their Nature and Effect, a Certificate of Public Convenience and Necessity Within the Meaning of the Statutory Provisions."

APPELLANT'S POINT (b)

"That the Report and Order of the Commission, Acting Through Division 4, of February 22, 1945, are not Subject to the Provisions of Section 17 of the Act (49 USCA 17), as the Report and Order of the Commission, Acting Through Division 4, of February 22, 1945, are Subject to the Provisions of Section 212 (a) of the Act (49 USCA 212(a)) and can be Suspended or Terminated only as Specifically Provided in the Aforenamed Section."

ARGUMENT

These points taken together involve three issues:

1. Is a report and order of a Division of the Commission the equivalent of a certificate? The issue has been answered in the negative by the courts.[13]

2. Can a Division of the Commission issue a report and order, under the circumstances of this case, which could have the force and effect of depriving protestants and the full Commission of the statutory right of reconsideration, review and appeal provided by the Interstate Commerce Act?[14] The issue has been answered in the negative by the courts and the Interstate Commerce Commission.[15]

3. Are the provisions of Section 212 (a) of the Interstate Commerce Act applicable under the facts and circumstances of this case?

The Commission has done nothing to modify or impair the certificate which is outstanding in the name of Draper and has not undertaken to do so. Draper is not alleging an injury from the Commission and is not before the Court.

This point has been fully covered by the motion to affirm, filed by the United States and the Interstate Commerce Commission and we therefore refrain from making a repetitious argument.

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[13] *Gregg v. U. S.*, 316 U. S. 74, 86 L. ed. 1283;
U. S. v. Seatrain, ——U. S. ——, 91 L. ed. 311.

[14] Section 17.

[15] *B. & O. Railroad v. U. S.*, 298 U. S. 349, 80 L. ed. 1209;
Federal Radio Commission v. Nelson, 289 U. S. 266. 77 L. ed. 1166;
Baldwin v. Milling Co., 307 U. S. 478, 83 L. ed. 1409;
Shawmut Trans. Co., 34 M. C. C. 569.

APPELLANT'S POINT (c)

"That There is no Statutory Authority for the Commission to Alter or Trim Down a Certificate of a Carrier by Imposing Limitations and Restrictions Upon the Kind of Service that the said Carrier can Render Differing from the Kind of Service that the Certificate Authorizes the Carrier to Render, as the Commission has Done with Respect to the Kind of Service Capable of Being Rendered Under the Certificate Issued to Draper."

ARGUMENT

This point involves three issues:

1. Does the Commission have statutory authority to classify carriers, make rules and regulations by classes, and has the Commission exercised such authority?

The Commission has authority to classify carriers [16] and has classified carriers and distinguished between the service of regular route and irregular route carriers.[17]

2. Has the statutory and administrative distinctions between types of common carriers been recognized by the courts?

These distinctions have been recognized and affirmed by the courts.[18]

3. Has the Commission modified or restricted rights heretofore granted under the Draper certificate?

The issue as stated by appellant presupposes facts which are not of record and presupposes results which do not follow in this case.

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[16] Interstate Commerce Act, Secs. 203(a)(14), 204b, 206(a) and 208.
[17] *Ex Parte MC* 10, 2 M. C. C. 703.
[18] *U. S. v. Maher*, 307 U. S. 148, 83 L. ed. 1162;
Cresent Express v. U. S., 320 U. S. 401, 88 L. ed. 127;
U. S. v. Carolina Carriers Corp., 315 U. S. 475, 86 L. ed. 971;
I. C. C. v. Fordham Bus Corp., 38 Fed. Supp. 738;
Garford Trucking Inc. v. U. S., 64 Fed. Supp. 780;
I. C. C. v. G & M Motor T. Co., 64 Fed. Supp. 302.

The Commission has not modified any rights held by Draper under his certificate. The Commission has simply refused to permit Falwell to acquire a segment of the Draper rights and to perform a service thereunder which is beyond the scope of the Draper certificate. The practical effect is not a reduction by the Commission in the scope of the Draper certificate but a refusal by the Commission to allow Falwell to enlarge the scope of the Draper certificate and thereby annul the distinction between types of operations which the Commission is authorized to make and which distinctions have been recognized by the courts.

APPELLANT'S POINT (d)

"That the Report and Order of the Commission Dated January 14, 1946 are Contrary to the Provisions of Section 5 of the Act (49 USCA 5)."

ARGUMENT

This point involves three issues:

1. Does the Commission have administrative jurisdiction to determine whether a merger shall be effected?

Mergers and consolidations are lawful only upon approval by the Commission therefore appellant has no vested right to merge.[19]

2. What is the permissible scope of exercise by the Commission of its administrative discretion?

The measure of permissible administrative discretion may be any facts and circumstances found to be inconsistent with the public interest or contrary to the National Transportation Policy.

Here the Commission found the appellant had disregarded, proposed to disregard, and would necessarily disregard its classification of carriers.

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[19] Interstate Commerce Act, Sec. 5.
McLean Trucking Co. v. United States, 321 U. S. 67, 88 L. ed. 544.

Here the Commission found that the Draper rights cannot be split "if there is to be any possibility of preserving the irregular route nature of the service authorized" to Draper.

Had the record been brought before the court, many more cogent grounds for denial could be pointed to. Appellant's failure to produce the record cannot be turned into a weapon against the Commission. The Commission pointed out enough to support its order and appellant cannot imply that there was no more simply by withholding the record.[20]

3. To what extent are the statutory and procedural provisions applicable to appellant?

Appellant would torture the plain statutory requirements for findings by the Commission, under Section 5, disregard the Rules of Practice, and thereby accomplish by indirection that which is foreclosed by authorized procedure. Recognizing the weakness of its position, appellant applied to the Commission for a certificate for regular route operations between Roanoke and Lynchburg.[21] After full hearing the Commission found that appellant had failed to establish public convenience and necessity. Appellant knew that that ruling cannot be successfully assailed. This appeal if successful, would circumvent the administrative discretion of the Commission in the proceedings under both Section 5 and Section 207.

CONCLUSION

In conclusion, we point out a recent case in which this Court referred to the discretion of the Commission:

> "Its function is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to

[20] *Mississippi Valley Barge L. Co. v. U. S.*, 292 U. S. 282, 78 L. ed. 1267.

[21] Stated by the Commission in its report and order of January 14, 1946. Application denied by the Commission on May 2, 1946, Docket MC 903 Sub 17 (unreported).

> determine from its analysis of the total situation on which side of the controversy the public interest lies." *United States v. Detroit & Cleveland Navigation Co.*, 66 S. Ct. 75, 77.

The argument advanced by appellant would substitute its construction of the dead words of a statute for the administrative function of the Commission—the experts. This Court has so often recognized the duties and functions of the Commission that to us it seems unnecessary to belabor the issue with numerous cases. We will therefore close with just one more pertinent reference.

> "The function of 'weighing' in the evidence, therefore, remains peculiarly one for the Commission 'appointed by law and informed by experience', and not for the courts. *Alton Railroad Company v. United States*, 315 U. S. 15, 62 S. Ct. 432, 86 L. Ed. 586; *Gray v. Powell*, 314 U. S. 402, 62 S. Ct. 326, 86 L. Ed. 301. This is in accord with the realization that the regulation of transportation involves various economic factors and the exercise of an empirical judgment, since 'The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems.' *Board of Trade of Kansas City v. United States*, 1942, 314 U. S. 534, 546, 62 S. Ct. 366, 372, 86 L. Ed. 432." *Virginia Stage Lines v. United States*, 48 Fed. Supp. 79, 83.

We have been advised, informally, that the Irregular Route Common Carrier Conference expects to argue that there is presented here the broad general issues involving the distinctions between the service which regular route carriers and irregular route carriers may render under certificates issued under Section 208. Assuming that our advice is correct, it is our position that the Commission's power and discretion under Section 5 are entirely distinct from the question of permissible service under Section 208. Here the Commission had ample grounds to deny

Falwell's application under Section 5 and we submit that the Falwell case should be decided in the light of the Commission's discretion with respect to mergers under Section 5. Presumably the Irregular Route Common Carrier Conference may refer to a so-called Brady case, which is pending before the Commission and for that reason we wish to point out that the Brady case involves a charge of rendering service in excess of certificated authority, whereas the issues in the Falwell case involve consistency with the public interest under Section 5. We believe that there are no good reasons for confusing the issues in the Falwell case by reference to such issues as may at a later time arise under the Brady case.

The motion of the United States and the Interstate Commerce Commission to affirm the decision of the District Court should be granted.

Respectfully,

REGULAR COMMON CARRIER CONFERENCE OF AMERICAN TRUCKING ASS'NS., INC.
and
BROOKS TRANSPORTATION COMPANY, INC.

By:

J. NINIAN BEALL
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H. LAUREN LEWIS

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March 19, 1947.

APPENDIX

INTERSTATE COMMERCE ACT

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

POOLING; UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Sec. 5. (1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of Section 1 of this part, it shall be unlawful for any common carrier subject to this part, Part II, or Part III to enter into any contract, agreement, or combination with any other such common carrier or

carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further*, That any contract, agreement, or combination to which any common carrier by water subject to Part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on the date this paragraph as amended takes effect, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate owner-

ship; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in Section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a

carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Com-

mission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

(3) Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2), to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Section 20 (1) to (10), inclusive, of this part, Sections 204(a) (1) and (2) and 220 of Part II, and Section 313 of Part III (which relate to reports, accounts, and so forth, of carriers), and Section 20a (2) to (11), inclusive, of this part, and Section 214 of Part II (which relate to issues of securities and assumptions of liability of carriers), including in each case

the penalities applicable in the case of violations of such provisions. In the application of such provisions of Section 20a of this part and of Section 214 of Part II, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words "control or management" shall be construed to include the power to exercise control or management.

(5) For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

(6) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means, it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(7) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this part; and with respect to any violation of paragraphs (2) to (12), inclusive, of this section, any penalty provision applying to such a violation by a common carrier subject to this part shall apply to such a violation by any other person.

(8) The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(9) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

(10) Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are motor carriers subject to Part II (but not including a motor carrier controlled by or affiliated with a carrier as defined in Section 1 (3)), and where the aggregate number of motor vehicles owned, leased, controlled, or operated by such parties, for purposes of transportation subject to Part II, does not exceed twenty.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power) with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise

any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

(12) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

(13) As used in paragraphs (2) to (12), inclusive, the term "carrier" means a carrier by railroad and an express company, subject to this part; a motor carrier subject to Part II; and a water carrier subject to Part III.

COMMISSION PROCEDURE; DELEGATION OF DUTIES; REHEARINGS

Sec. 17 (1) The Commission is hereby authorized by its order to divide the members thereof into as many divisions (each to consist of not less than three members) as

it may deem necessary, which may be changed from time to time. Such divisions shall be designated, respectively, division one, division two, and so forth, or by a term descriptive of the principal subject, work, business, or function assigned or referred to such divisions. The Commission may designate one or more of its divisions as appellate divisions. Any Commissioner may be assigned to such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting a division shall act as chairman thereof unless otherwise directed by the Commission. When a vacancy occurs in any division or when a Commissioner because of absence, or other cause, is unable to serve thereon, the Chairman of the Commission or any Commissioner designated by him for that purpose may serve temporarily on such division until the Commission otherwise orders.

(2) The Commission may by order direct that any of its work, business, or functions under any provision of law (except matters required to be referred to joint boards by Section 205, and except functions vested in the Commission under this section), or any matter which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a "board") to be designated by such order, for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys. The assignment or reference, to divisions, of work, business, or functions relating to the lawlessness of rate, fares, or charges shall be made according to the character of regulation to be exer-

cised and not according to the kind or class of the carriers involved or to the form or mode of transportation in which such carriers may be engaged. When an individual Commissioner, or any employee, is unable to act upon any matter so assigned or referred because of absence or other cause, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

(3) The Commission shall conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission, the Secretary of the Commission, or any member of a board may administer oaths and affirmations and any member of the Commission or the Secretary of the Commission (or any member of a board in connection with the performance of any work, business, or functions referred under this section to a board upon which he serves) may sign subpoenas. A majority of the Commission, of a division, or of a board shall constitute a quorum for the transaction of business. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division, individual Commissioner, or board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division, individual Commissioner, or board and be heard in person or by attorney. Every vote and official act of the Commission, or of any division, individual Commissioner, or board, shall be entered of record, and such record shall be made public upon the request of any party interested. All hearings before the Commission, a division, individual

Commissioner, or board shall be public upon the request of any party interested. No Commissioner or employee shall participate in any hearing or proceeding in which he shall have any pecuniary interest.

(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under Part II, persons specified in Section 205 (e)), who may file exceptions thereto, but if within 20 days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated

division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof.

(6) After a decision, order, or requirement shall have been made by the Commission, a division, an individual Commissioner, or a board, or after an order recommended by an individual Commissioner or a board shall have become the order of the Commission as provided in paragraph (5), any party thereto may at any time, subject to such limitations as may be established by the Commission as hereinafter authorized, make application for rehearing, reargument, or reconsideration of the same, or of any matter determined therein. Such applications shall be governed by such general rules as the Commission may establish. Any such application, if the decision, order, or requirement was made by the Commission, shall be considered and acted upon by the Commission. If the decision, order, or requirement was made by a division, an individual Commissioner, or a board, such application shall be considered and acted upon by the Commission or referred to an appropriate appellate division for consideration and action. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor be made to appear; but the Commission may, from time to time, make or amend general rules or orders establishing limitations upon the right to apply for rehearing, reargument, or reconsideration of a decision, order, or requirement of the Commission or of a division so as to confine such right to proceedings, or classes of proceedings, involving issues of general transportation importance. Notwithstanding the foregoing provisions of this paragraph, any application for rehearing, reargument, or reconsideration of a matter assigned or referred to an individual

Commissioner or a board, under the provisions of paragraph (2), if such application shall have been filed within 20 days after the recommended order in the proceeding shall have become the order of the Commission as provided in paragraph (5), and if such matter shall not have been reconsidered or reheard as provided in such paragraph, shall be referred to an appropriate appellate division of the Commission and such division shall reconsider the matter either upon the same record or after a further hearing.

(7) If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

(8) Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed pending disposition of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision, order, or requirement, or operate to stay or postpone the enforcement thereof, without the special order of the Commission.

(9) When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of

a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

(10) Any matter arising in the administration of Part II of this Act as to which a hearing is to be held may be referred to an examiner of the Commission, for action thereon, subject to the conditions and limitations provided in this section in the case of reference of work, business or functions as to which a hearing is to be held, to an individual Commissioner or board.

(11) Representatives of employees of a carrier, duly designated as such, may intervene and be heard in any proceeding arising under this Act affecting such employees.

(12) The Commission is authorized to promulgate reasonable rules and regulations relating to admission to practice before it, and is authorized to impose a reasonable fee for such admission, and such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

DEFINITIONS

SEC. 203. (a) As used in this part—

(14) The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or prop-

erty or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to Part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Part I.

GENERAL DUTIES AND POWERS OF THE COMMISSION

SEC. 204. (b) The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle," or "contract carrier by motor vehicle," as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 206. (a) Except as otherwise provided in this section and in Section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operation: *Provided, however,* That, subject to Section 210, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes

or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, and has so operated since that time except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in Section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in

such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provision of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

ISSUANCE OF CERTIFICATE

SEC. 207. (a) Subject to Section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

TERMS AND CONDITIONS OF CERTIFICATE

SEC. 208. (a) Any certificate issued under Section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under Section 204 (a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

(b) A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this part may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

(d) A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, and to transport baggage of passengers in a separate vehicle.

SUSPENSION, CHANGE, REVOCATION, AND TRANSFER OF CERTIFICATES, PERMITS, AND LICENSES

SEC. 212. (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in Section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the

provisions of Section 206, 209, or 211, or by virtue of the second proviso of Section 206 (a) or temporary authority under Section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of Section 211 (c), 217 (a), or 218 (a), or with any lawful order, rule, or regulation of the Commission promulgated thereunder.